

ELIGIBILITY and INELIGIBILITY

I. LEGAL AUTHORITY:

Rehabilitation Act of 1973 (PL 93-112), as amended through P.L. 105-220, the Workforce Investment Act of 1998; Sect. 102.

II. POLICY STATEMENT AND PURPOSE:

The Office of Rehabilitation Services will (1) determine eligibility of applicants for services within sixty (60) days of application unless particular circumstances apply (see II., B., 4.); (2) utilize existing information provided by the individual and/or from other programs and providers, particularly information used by education officials and the Social Security Administration, information provided by the individual and the family of the individual, and information obtained under the assessment for determining eligibility and vocational rehabilitation needs; (3) presume individuals can benefit from vocational rehabilitation services in terms of an employment outcome unless clear and convincing evidence demonstrates otherwise; and (4) provide due process whenever an individual is aggrieved by an Agency decision.

An individual who has a disability or is blind pursuant to Title II (SSDI) or Title XVI (SSI) of the Social Security Act shall be considered to be an individual with a significant disability and presumed to be eligible for vocational rehabilitation services, providing that the individual intends to achieve an employment outcome, i.e., becoming employed or retaining or regaining employment.

A. Definitions:

1. Individual with a Disability

The term "individual with a disability" means any individual who has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment and who can benefit in terms of an employment outcome from vocational rehabilitation services. It shall be presumed that the individual can benefit in terms of an employment outcome from VR Services unless clear and convincing evidence demonstrates otherwise.

2. Physical or Mental Impairment

The term "physical or mental impairment" means any injury, disease, or other condition that materially limits or, if untreated, will materially limit physical or mental functioning.

3. Assessment for Determining Eligibility and Vocational Rehabilitation Needs

The term "assessment for determining eligibility and vocational rehabilitation needs" means, as appropriate in each case:

- a. A review of existing data to determine whether an individual is eligible for vocational rehabilitation services; and
- b. Assignment of an Order of Selection priority category when the Agency is under an Order of Selection; and
- c. When a preliminary assessment finds that existing data are insufficient to make a determination of eligibility or OOS assignment, vocational services, including rehabilitation technology, shall be provided to yield the data upon which an assessment may be made in order to determine eligibility and Order of Selection; and
- d. To the extent additional data is needed, a comprehensive assessment of the unique strengths, resources, priorities, concerns, interests, and needs, including the need for supported employment and rehabilitation technology of an eligible individual to make a determination of the goals, objectives, nature, and scope of vocational rehabilitation services to be included in the Individualized Plan for Employment (IPE).

4. Substantial Impediment to Employment

The term "substantial impediment to employment" means that the physical or mental impairment (in light of attending medical, psychological, educational, or other related factors) prevents the individual from preparing for, entering, engaging in or retaining gainful employment consistent with the individual's abilities and capabilities.

B. Eligibility

1. An individual who has a disability or is blind as determined pursuant to Title II or Title XVI of the Social Security Act shall be:
 - a. Considered to be an individual with a significant disability; and
 - b. Presumed to be eligible for vocational rehabilitation services, provided that the individual intends to achieve an employment outcome consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual unless ORS can demonstrate by clear and convincing evidence that

such individual is incapable of benefiting in terms of an employment outcome from vocational rehabilitation services due to the severity of the disability of the individual.

2. To the extent possible, existing information will be used to make the determination of eligibility. Rehabilitation services, including rehabilitation technology in the evaluation process, must be provided as appropriate to determine eligibility.
3. It shall be presumed that the individual can benefit in terms of an employment outcome from vocational rehabilitation services unless clear and convincing evidence demonstrates otherwise.
4. The determination of eligibility will be made in sixty (60) or fewer calendar days following application unless:
 - a. The agency and the individual agree that exceptional and unforeseen circumstances beyond the control of the agency prevents determination within sixty (60) days; and
 - b. The agency and individual agree to a specific time-limited extension; or
 - c. The agency is exploring an individual's potential for employment through trial work.
5. When eligibility cannot be determined within sixty (60) days, the individual is so advised in writing.

C. Ineligibility

1. An individual is ineligible for services if one of the following is applicable:
 - a. The individual does not have an impairment which constitutes a substantial impediment to employment, or
 - b. The individual cannot, on the basis of clear and convincing evidence using trial work, benefit from vocational rehabilitation services, or
 - c. The individual does not need vocational rehabilitation services to become employed.
2. When the basis for an ineligibility decision is the individual's inability to benefit from services, the agency must have explored the individual's abilities,

capabilities, and capacity to perform in work situations, which shall be assessed periodically during trial work experiences, including experiences in which the individual is provided appropriate supports and training. These trial work experiences shall be of sufficient variety and over a sufficient period of time to determine the existence of clear and convincing evidence that the individual is incapable of benefiting in terms of an employment outcome from vocational rehabilitation services due to the severity of the disability of the individual. The use of trial work experiences is not required when an individual cannot take advantage of them.

3. Prior to a determination that an individual is ineligible (either before or after services are initiated), the individual (or his/her parent, legal guardian, or other representative, as appropriate) will be included in the decision-making process.
4. If an individual is found to be ineligible, the individual shall receive notification in writing or by other appropriate modes of communication in accordance with the individual's informed choice, of the reason, his/her rights and remedies, and the availability of services provided by the Client Assistance Program.

III. PROCEDURES:

A. Eligibility

When a determination of eligibility for Vocational Rehabilitation services has been made by a qualified vocational rehabilitation counselor:(See Section 101.4.1. for description of Qualified Rehabilitation Counselor.)

1. The case record must contain sufficient supporting data to warrant the finding of eligibility.
 - a. These include medical or psychological records attesting to the individual's current state of health or, for permanent or stable conditions, any dated medical record in conjunction with a self-assessment of current health and functional capacity. For SSI/SSDI recipients, the record must contain documentation of SSI or SSDI eligibility.
 - b. In the absence of medical documentation, medical and psychological consultants may determine that alternative information, such as the Current Health and Functional Capacities (CHFC) checklist.

2. The case record must contain documentation that a disability exists, that there are significant functional limitations that impede employment and that the individual can benefit from rehabilitation services in terms of employment.
 - a. The case record must contain notations of the individual's employment history (or its equivalent, as with a student or homemaker), and describe difficulties the individual has experienced because of the disability in preparing for, entering, engaging in, or retaining employment, such as accommodations, including rehabilitation technology needed, or social skill deficits in the workplace.
 - b. The record must also contain notations describing existing skills, knowledge and abilities, both occupational and personal which the individual has available, such as transferable skills, problem-solving ability, or job finding skills, which nevertheless need to be supplemented with vocational rehabilitation services in order for the individual to achieve an appropriate employment outcome.
3. Whenever the State implements an Order of Selection (OOS), the qualified vocational rehabilitation counselor should describe which functional capacities have been seriously limited by the impairment(s), note whether multiple services over an extended period of time are anticipated, assign the individual's OOS category, and code the corresponding block on the MIS.
 - a. If the assignment is to a category not currently being served by the agency, the individual is put on a waiting list and assigned to a category. The counselor will notify client of eligibility in writing or by other appropriate modes of communication in accordance with the individual's informed choice, and provide counseling and information about other resources that may assist the individual to achieve an employment outcome.
4. A Certification of Eligibility (Form ORS-15) must be completed and signed by the qualified vocational rehabilitation counselor.

B. Ineligibility

When an individual is found ineligible for Vocational Rehabilitation services, a qualified vocational rehabilitation counselor must have:

1. Compiled clear and convincing evidence in accordance with II., C., 2., above; and
2. Made the decision in full consultation with the individual or his or her parent, family member, guardian, advocate or other authorized representative; and

3. Completed and signed the Certification of Ineligibility Form (ORS-15) in the case record; and
4. Completed narrative case entries under the heading of Ineligibility. This narrative statement must describe the basis for the determination of ineligibility; and
5. Informed the individual in writing or, as necessary, by other appropriate modes of communication in accordance with an individual's informed choice, of the basis of the determination of ineligibility, of his or her rights and remedies, including due process (See Section 115.12), and of a joint review in one year to determine if the ineligibility decision should be reversed, and of the services available under the Client Assistance Program, and how to access those services; and
6. Processed case for closure (See Section 115.18).
7. Any ineligibility determination that is based on a finding that the individual is incapable of benefiting in terms of an employment outcome shall be reviewed within twelve (12) months. No review is required in situations where the individual has declined re-review, refused services, cannot be located, or the medical condition is rapidly progressive or terminal. Cases will be reviewed at least once, although the individual retains the option to request a review at any time following closure and are notified in writing of that option. The requirement for review includes all cases closed as ineligible for this reason, regardless from which status.
8. In those cases when a review is necessary, the counselor will contact the individual to determine her/his current circumstances. After contact, an entry will be put in the case record. If the circumstances warrant a reversal of the previous ineligibility decision, a new application will be processed. If the individual's circumstances do not warrant a reversal of the ineligibility decision, the counselor will inform the individual of their continuing right to request a review at any future time.